
**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY	:	
	:	
	:	
Approval of Energy Efficiency and Demand	:	Docket No. 07-0540
Response Plan Pursuant to Section 12-103(f)	:	
Of the Public Utilities Act	:	

BRIEF ON EXCEPTIONS

OF

THE BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO

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Now comes The Building Owners and Managers Association of Chicago (“BOMA”), by its attorneys, the Law Office of Michael A. Munson, and hereby files its brief on exceptions in the within proceeding pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (the “Commission”) and submits its proposed revisions to the proposed order (the “Proposed Order”) issued by the Administrative Law Judges on January 25, 2008.

INTRODUCTION

These proceedings arose in connection with the filing by Commonwealth Edison Company (“ComEd”) of its petition requesting approval of its 2008-2010 Energy Efficiency and Demand Response Plan (“ComEd’s Plan”) pursuant to Section 12-103 of the Public Utilities Act (“Act”), 220 ILCS 5/12-103, requesting that the Commission issue an order approving ComEd’s Plan and its proposed cost-recovery mechanism, Rider EDA – Energy Efficiency and Demand Response Adjustment (“Rider EDA”). Because of statutorily-imposed deadlines on issuance of a final order by the Commission in these proceedings, the presentation of testimony, briefing and trial of this matter were effectuated on an extremely expedited basis. BOMA fully acknowledges and appreciates the exceptional efforts of the Commission and its Staff in analyzing and considering the complex, and in many instances, novel issues presented in this docket. Subject to the provisos and proposed revisions hereinafter set forth, BOMA believes that the conclusions and findings set forth in the Proposed Order are salutary and consistent with the legislative goals of Section 12-103 of the Act.

In its Initial Brief, BOMA asserted that ComEd’s Plan should include three distinct elements:

- First, that in lieu of the “one-size fits all” cost recovery calculation methodology proposed by ComEd, the per kilowatt-hour (kWh) surcharge must be calculated in

accordance with the plain meaning of the legislation, and should be applied on a delivery class basis;

- Second, Customers must have free access to their own usage information, particularly interval data and ENERGYSTAR® data, as integral inputs for customer energy efficiency and demand response program participation; and
- Third, that a formal collaborative process between ComEd, BOMA and other interested parties must be established for the ongoing implementation of energy efficiency and demand response programs.

(BOMA Initial Brief at p.3).

In its Proposed Order, the Commission properly rejects ComEd's proposal to collect its prudently and reasonably incurred incremental costs through a single cent per kilowatt-hour charge, which charge would be applied uniformly to all customer classes. Proposed Order at p. 38. In lieu thereof, the Commission concludes that IIEC's proposal to adopt separate cost-recovery mechanisms for three different customer classes (i.e. residential, small commercial and industrial and large commercial and industrial) is viable and consistent with the Act. *Id.* BOMA concurs that IIEC's proposal is reasonable and workable, and accordingly supports the Commission's conclusions. However, for the reasons hereinafter set forth, BOMA submits that the Commission's analysis and rationale for rejection of BOMA's proposal to adopt a cost-recovery mechanism that differentiates customers by various distribution delivery classes is erroneous and should, as a matter of policy, be corrected in the Final Order.

BOMA further asserts that the Final Order should mandate that ComEd provide all customers free access to their own interval data and applicable United States Department of Energy and Environmental Protection Agency ENERGYSTAR data. The relatively inconsequential costs and burdens to ComEd of providing such information (and/or of creating the infrastructure for automated information transfer) is greatly outweighed by the benefits of access to such information to customers and to the statutorily-mandated energy efficiency goals of the Act.

Finally, BOMA submits that while the Commission encourages in the Proposed Order the development of more meaningful demand response and energy efficiency programs (Proposed Order at p. 53), the Proposed Order inaccurately characterizes the nature of the collaborative process proposed by BOMA and incorrectly rejects the establishment of such process for the future development of demand response and energy efficiency programs.

EXCEPTION 1: While The Commission Correctly Adopts The Energy Efficiency Surcharge Calculation Proposed By IIEC, The Commission's Rationale For Rejecting BOMA's Alternative Basis For Calculating The Surcharge As Set Forth In The Order Is Erroneous And Should Be Corrected Therein.

BOMA/Chicago supports the ultimate conclusion contained in the Order as to the use of IIEC's proposed methodology for purposes of calculating the surcharge as reasonable. However, BOMA/Chicago respectfully submits that the Commission's analysis and rationale for rejection of BOMA's proposal to adopt a cost-recovery mechanism that differentiates customers by various distribution delivery classes is erroneous and should, as a matter of policy, be corrected in the Final Order.

BOMA/Chicago Exhibit 1.3 also provides an alternative calculation of the surcharge based upon the estimated average revenue per kWh for each distribution rate class. Since each class has a different average cost per kWh, the surcharge differs accordingly. Each class surcharge is exactly equal to the percentage stated in 12-103(d) (e.g. .5% for 2008). Similar to the IIEC's proposal, BOMA/Chicago's proposal only re-distributes the funds that have been collected; such proposal does not reduce the amount of funds that a utility will be able to use. *See* Order at 38; BOMA Brief at pg. 13.

Finally, ComEd's claim and the Proposed Order's inclusion that there would be additional costs with BOMA's proposal were not substantiated in the Record. While ComEd witness Brandt stated that there would be additional personnel and system costs associated in

tracking and reporting breaking-out costs by rate class, ComEd Ex. 9.0, pg. 10, ComEd did not substantiate what exactly those costs would or even could possibly be. Simply stated, ComEd differentiates its tariffs based on the exact same rate classes contained in BOMA/Chicago Ex. 1.3. No evidence exists to support any assertion that application of the surcharge by distribution tariff class is impossible for the Company to accomplish or would incur any significant economic cost.

Notwithstanding the foregoing, BOMA/Chicago is in agreement with the Proposed Order that the IIEC's proposal is equitable, and urges final adoption of such proposal. However, BOMA/Chicago encourages the Commission revise portions of the Proposed Order in Section IV(9) to more accurately reflect BOMA's position and the evidence contained in the Record:

IV(9) Single-Charge Cost Recovery from all Customers

Analysis and Conclusions

While we acknowledge that all consumers will benefit ~~equally~~ from the imposition of the statute, as it attempts to confer cleaner air, less peak demand, and less of a need for new generation and other costs in an equal manner, the IIEC's approach is more in conformance with traditional rate-making principles that are enunciated in the Public Utilities Act. Specifically, Section 9-241 provides, in pertinent part that:

No public utility shall, as to rates or other charges, services, facilities or in other respect, make or grant any preference or advantage to any corporation or person or subject any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable differences as to rates or other charges, services, facilities, or in any other respect, either as between localities or as between classes of service.

(220 ILCS 5/9-241). We further note that IIEC's approach is also not unduly complicated. Additionally, it only re-distributes the funds that have been collected; it does not reduce the amount of funds that a utility will be able to use. This approach is reasonable and it should be adopted.

However, BOMA's construction of Section 12-103(d) of the Act is ~~erroneous~~
equally valid by separating the surcharge by distribution rate class.

~~It does limit the amount of energy efficiency and demand response measures equally valid in keeping with the construction of Section 12-103(d) of~~

~~the Act. . . It does limit the amount of energy efficiency and demand response measures, as BOMA contends, but, it does so in a uniform manner to all. It is a “cap.” For example, with regard to the first year of energy efficiency and demand response, it provides:~~

~~Notwithstanding the requirements of subsections (b) and (c) of this Section, an electric utility shall reduce the amount of energy efficiency and demand response measures implemented in any single year by an amount necessary to limit the estimated average increases in the amounts paid by retail customers in connection with electric service due to the cost of these measures to . . . in 2008, no more than 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007.~~

~~(220 ILCS 5/12-103(d) and (d)(1)). (Emphasis added). It limits what can be imposed on consumers, but, it makes that limitation in a uniform manner to be applied to all consumers. This portion of the statute does not aid BOMA.~~

Unlike the IIEC’s simple, straightforward approach which merely creates three broad customer classes, BOMA seeks to impose 15 different rates for 15 different classes. For simplicity, we adopt IIEC’s approach and note such approach is consistent with ComEd’s rates which traditionally reflect such differences in customer usage characteristics and resulting cost differences. (IIEC Brief at 6). ~~Due to the brevity of time afforded by the General Assembly, it is not possible to determine whether BOMA’s approach is a reasonable one.~~

~~We also note that necessarily, dividing the charge amongst 15 customer classes in the manner described by BOMA would require the expenditure of some time and money, unnecessarily, thereby diverting some efforts from the achievement of the statutory goals. We decline to adopt BOMA’s recommendations on this issue.~~

Constellation New Energy’s proposal appears to be that, essentially, a utility should be required to determine which customers of alternative electric suppliers are participating in demand response or energy efficiency programs offered by an alternative electric supplier, and then exclude these persons or entities from the charge imposed for energy efficiency and demand response, or, offer those persons or entities a discount. However, there is no evidence indicating what such a process would entail, or, if it is even feasible. We therefore decline to follow this recommendation.

EXCEPTION 2: The Proposed Order Errs By Failing To Require ComEd To Provide Customers Free Access To Their Own Interval Data And Applicable ENERGYSTAR Data

In parallel to this proceeding, in ComEd’s rate case (Docket No. 07-0566), ComEd has proposed a type of meter/data infrastructure and the cost recovery of such in Rider SMP. Therefore, BOMA’s urging of the Commission for ComEd to provide data/meter infrastructure

and real time information will no doubt be addressed in that docket. In this docket, it is important to understand BOMA's as well as other parties' requests in regard to access to data, and BOMA apologizes for any confusion as to its proposals. To be clear, BOMA seeks the Commission require ComEd to provide customers with free access to their own existing historical interval meter data, and their applicable ENERGY STAR® data.

In testimony in this proceeding BOMA provided the Commission with information as to how important data is to customers in achieving energy efficiency and social goals (e.g. reductions in effluents) *See, inter alia*, BOMA/Chicago Ex. 1.2 BOMA also provided testimony that ready access by customers to their own interval usage data will effectively foster such participation in all types of energy efficiency measures (e.g. ComEd's, ENERGY STAR®'s, the City of Chicago's, LEED measures, among many others). *See, inter alia*, BOMA Ex. 2.0 at 4. Additionally, allowing customers access to their own interval usage data as noted by BOMA witnesses Skodowski and Cushing, will encourage a healthy and competitive demand response industry by mitigating the cost of market entry; enabling program designers, policymakers and customers to anticipate demand response impacts and benefits; and to reliably measure the net benefits of demand response options. BOMA Initial Brief at p.8-9; BOMA Ex. 2.0 at 7.

The Proposed Order, while encouraging ComEd to provide whatever information it has to BOMA members, declines to require the provision of free access to Customers own information, other than participants in ComEd's Business Solutions program. Proposed Order at p. 52. The Commission's ostensible rationale is that there is "no reason articulated for all of ComEd's customers to pay for information that would be useful to only a few customers" and that there is no evidence to suggest that ComEd can provide the real-time information requested. *Id.* Such

rationale is unavailing. ComEd obviously can provide access to customer's usage data; it already provides access to such data to ENERGY STAR® program participants and has agreed in this docket to provide access to such data to customers participating in the Business Solutions Program. Brandt Rebuttal L. 358-62, L. 374-6. No evidence has been presented that the cost of providing such data will be material or that the administrative burdens incident thereto will in any way outweigh the acknowledged benefits accruing from giving better information to customers.

Neither BOMA nor the City of Chicago advocate provision of information to "only a few customers;" rather the customers who could benefit from access to interval data and other usage information represent a substantial portion of ComEd's total load. It is ComEd's determination to only provide free data only to its Business Solution Program participants that discourages development of a competitive demand response industry and inhibits participation in energy efficiency programs by other customers. Moreover, and most fundamentally, any energy efficiency measures that a customer implements as a result of being able to access and analyze its own usage data will benefit everyone. The Commission cites ComEd's express acknowledgement that "...the statutory policy makes it clear that the measures to be implemented pursuant to Section 12-103 benefit society in general" and that the Act requires a utility to have a portfolio of energy efficiency measures that "represent a diverse cross-section of opportunities for customers of all rate classes to participate." Proposed Order at p.37.

The unimpeded access by customers to usage information is essential to realization of the societal benefits of energy efficiency. As ComEd's own witness Brandt states:

"...it is ComEd's intent to provide this data to as many non-residential customers as possible because we believe that one of the first steps to developing an energy efficiency

culture is providing customers with a true understanding of how they use their energy.” (ComEd Ex. 9, ll. 364-66).

Similarly, because allowing Customers with access to their own information is so critical, and the benefits unrebutted in this proceeding, BOMA suggests that requiring adequate meter/data infrastructure is the most important action that the Commission can take to foster a demand response program in Northern Illinois. BOMA/Chicago Ex. 3.0.

Although ComEd appears to have taken the position to not provide Customers with access to their own existing data in this docket and that implementing such infrastructure is not practicable, ComEd is requesting cost recovery for Advanced Metering Infrastructure (“AMI”) through Rider SMP in their general rate case (ICC Docket No. 07-0566). According to ComEd, the axiomatic reasoning for AMI is to reduce costs through access to better information. BOMA Initial Brief at p. 16. Such goals are precisely the same as BOMA, the City of Chicago and the Consumer Powerline have advocated in these proceedings.

Accordingly, to promote energy efficiency and access to demand response initiatives the Commission should require ComEd to provide Customers with free access to their own existing interval usage data and applicable ENERGY STAR® data. BOMA respectfully requests that in lieu of the Analysis and Conclusions set forth at the end of Subsection E of Section V of the Proposed Order at pages 52-53, the Commission adopt the following language:

Analysis and Conclusions.

The Commission concurs with BOMA, the City of Chicago and the Consumer Powerline that free access to customers’ interval usage information is necessary so that energy efficiency measures can be more precisely designed to most efficiently meet individual building owners’ needs. A building requires data to participate in existing programs and/or to implement and evaluate its energy efficiency strategies, and a building’s costs to acquire their own usage data from ComEd is too prohibitive. The Commission further concurs that access to such information will increase the energy efficiency and waste reduction of buildings. Such improvements in energy efficiency programs will inure to the benefit of all

customers and will better effectuate the legislative goals set forth in Section 12-103(f) of the Act.

The Commission further agrees that providing buildings with free ENERGY STAR® data supports and furthers the goals set forth in Act. For large buildings, including hospitals, governmental buildings and commercial buildings, the ENERGY STAR® program is a free program already existing in the marketplace that standardizes energy efficiency with consistent and solid information for comparison internally or with peers. (BOMA Ex. 2.0 at p. 4). In order to participate in this program, the single most important need for buildings is access to information which will provide a more discerning capital profile, benchmark buildings and track performance.

Accordingly, the Commission concludes that ComEd shall be required to provide, upon request by a customer (whether or not a current participant in ComEd's Business Solution Program), and without cost to the customer, historical interval data and applicable Energy Star® data.

EXCEPTION 3: The Proposed Order Should Be Revised To Mandate That ComEd Formally Collaborate With BOMA and Other Interested Parties To Develop Better And More Efficient Energy Efficiency Programs

Commendably the Commission encourages ComEd to develop meaningful energy efficiency and demand response programs for BOMA and like entities. Proposed Order at p. 53. The Commission also recognizes the importance of having all parties review ComEd's progress towards achieving the required energy efficiency and demand response goals in adopting the proposals of NRDC, BOMA, ELPC and others to establish a formal Stakeholder Advisory Committee. Proposed Order at p. 32-33. In this context, the Commission's refusal to accept the proposal of BOMA and Consumer Powerline to mandate a formal collaborative process between ComEd and other interested parties for the purpose of better developing commercial energy efficiency programs is surprising.

The Proposed Order characterizes BOMA's request for collaboration with ComEd as a "...formal partnership between ComEd and BOMA" which would require the Commission to "micromanage ComEd's program". Proposed Order at p. 53. Such characterization misstates the

intent of BOMA's proposal. BOMA does not propose that the Commission mandate the formation of a legally-constituted entity which would exercise binding authority or veto power over ComEd's development of its statutorily-mandated programs, nor does it seek to usurp the responsibility of the utility or DCEO. Rather, BOMA proposes the creation of a formal process whereby ComEd, BOMA and any other interested parties can exchange technological, economic and other information and ideas with the goal to improving and developing energy efficiency programs. Such collaborative process, if designed and implemented properly, would significantly increase the probability that the programs debated in this proceeding will be successful. The extremely expedited nature of these proceedings make it all the more critical that interested parties are afforded a forum to review and analyze the voluminous and complex filings presented in this matter and to better assure that proposed energy efficiency and demand response measures are being designed to best achieve the legislative goals articulated in the Act. BOMA Ex. 1.0, pg. 2.

It is undisputed that BOMA members have been a demonstrated leader in the energy efficiency marketplace, both in terms of program participation and education. BOMA/Chicago Ex. 2.0 at pg. 4. Other customers and customer groups undoubtedly possess invaluable experience and knowledge which can only serve to maximize the overarching goal in encouraging and improving energy efficiency. Accordingly, BOMA respectfully requests that the Commission remain involved with the process and that the following language be substituted at the end of the Analysis and Conclusions Section of Section IV(6):

How often the advisory committee meets and other procedural matters such as notice and comment for committee reviews of key issues should be determined by the Utility and members of the committee. The advisory committee ~~shall need not~~ report to the Commission on an annual basis.

In addition, in lieu of the Analysis and Conclusions set forth at the end of Subsection F of Section V of the Proposed Order at page 53, the Commission adopt the following language:

The Commission concurs that collaboration between ComEd and customer groups is critical to the continued development of energy efficiency and demand response programs and will help the legislative goals set forth the legislative goals set forth in Section 12-103(f) of the Act. Customers and Customer groups are encouraged to participate in the stakeholder advisory committee discussed in Section IV(6) in this Order.

CONCLUSION

Wherefore, the BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO respectfully requests the Proposed Order be adopted with the above three changes thereto.

Respectfully submitted,

THE BUILDING OWNERS AND MANAGERS
ASSOCIATION OF CHICAGO

A handwritten signature in black ink that reads "Michael Munson". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

By: Michael Munson, its attorney

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